

IN THE MATTER OF	:	BEFORE THE
ELKHORN OVERLOOK, LLC	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 06-039C

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DECISION AND ORDER

On November 27, 2006, the former Hearing Examiner¹, Mr. Tom Carbo, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Elkhorn Overlook, LLC, for a conditional use to construct two-family dwellings in an R-12 (Residential: Single) zoning district, filed pursuant to Section 131.N.48.a² of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. The undersigned, serving as the current Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. Howard Alderman, Esquire, Levin & Gann, P.A., represented the petitioner. Mr. R. Jacob Hikmat, the principal contact for Elkhorn Overlook, LLC, testified in support of the petition. No one testified in opposition to the petition.

¹ Since that hearing, Mr. Carbo became Deputy Director of the Department of Housing and Community Development, and the undersigned, serving as the new Hearing Examiner, agreed to draft the decision so Mr. Carbo could avoid any potential conflict of interest. In accordance with Maryland law, I reviewed the entire record of the case to become familiar with the issues.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property, 8898 Old Montgomery Road ("the Property"), is located in the 6th Election District on the north side of Old Montgomery Road approximately 400 feet west of MD 175 and about 100 feet from the road's cul-de-sac terminus near MD 175. The Property is referenced on Tax Map 36, Grid 11, as Parcel 246, Lots 1-4. The 1.6-acre Property is triangular and is improved with a single-family detached dwelling located in the southeast portion of the lot. It was recorded as the Elkhorn Overlook subdivision with 5 lots (Lot 5 being an open space lot) with Final Plat 18301 on May 25, 2006.

2. Vicinal properties include recorded abutting open space on the northeast and northwest sides. A utility right-of-way runs northeast from the Property's easternmost corner, beyond which are properties generally zoned New Town and improved with various commercial structures. Across Montgomery Road on the Property's southeast and northwest sides are Lots 1 and 13, Village of Long Reach-designated open space lots, which surround much of the Property. A stream runs through open space Lot 1. Along Old Montgomery Road to the northwest of the open space and the Property is the New Town-zoned Jeffers Ridge Townhouse development in Long Reach, the closest dwelling located about 250 feet from the Property's northwest corner.

² Although the DPZ technical staff report cites the conditional use provision as Section 131.N.47.a, the provision in effect when the plan was first submitted, the evaluation applies the appropriate standard, which has been recodified as Section 131.N.48.a.

3. Roads: Old Montgomery Road, depicted as a local road on the 2000 General Plan's Transportation Map 2000-2020, has one travel lane in each direction. There is no traffic volume information for the road. From the proposed driveways on Old Montgomery Road, the 500-foot western sight distance appears acceptable, and sight distance to the east does not appear to be an issue, since the road ends in a cul-de-sac about 100 feet from Lot 1.

4. The Property is served by public water and sewer facilities. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential."

5. The Petitioner proposes to construct four two-family dwellings on four lots as a conditional use pursuant to Section 131.N.48.a. Applicant's Exhibit 2 shows that each two-family dwelling unit is to be designed and constructed as an integrated structure. The individual units as depicted on Exhibit 2 will be about 25 feet wide and 55 feet deep. The two-story units will have two-car garages and two driveway parking spaces.

6. Mr. Hikmat, a professional engineer, testified that Exhibit 2 did not change the design of the proposed conditional use, but rather offered clarification in the General Notes section, where Note 4 states, in direct to response technical staff report comments, that the proposed units will be designed to allow for the following:

- a) the incorporation of universal design features for the aging community, including a master bathroom on the first floor or the construction of a stairway capable of supporting the installation;
- b) no-step access to the front entrance;
- c) a 36 inch wide front door with exterior lighting of the entrance;
- d) interior doorways at least 32 inches wide;

- e) hallways at least 36 inches wide;
- f) lever handles on interior and exterior doors;
- g) blocking for grab doors in bathrooms walls near toilet and sink; and
- h) that the unit footprints will be revised to incorporate a 22-foot minimum footprint.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. A two-family dwelling is presumptively compatible with residential area land use. The Petitioner's proposed use, four two-family dwellings, complies with all setback requirements. The proposed development as designed is an appropriate scale for the area in which the Property is located, a uniquely isolated part of the county owing to its closeness to MD 175, the cul-de-sac, open space, and a utility easement. The Property is also located along a local road with what appears to be adequate sight distance from the proposed driveways.

2. In discussing the proposed conditional use's compatibility with the General Plan, the technical staff report refers to Chapter 4's policy discussion and recommendations about housing for aging residents. The report reasons that the intent of the two-family dwelling conditional use category is to provide opportunities for aging residents who desire to age in place or live with family members. The proposed housing would contribute to this goal, allowing aging parents to reside next to family members who might take up residence in one unit. Chapter 4 also supports

the incorporation of universal design features into the county's housing stock, and as discussed above, these features are an intrinsic element of each unit's design, although universal design features are not required for the proposed conditional use.

3. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.

4. Adverse Effect: The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with two-family dwellings in an R-12 district: The proposed use is sufficiently distant from adjacent properties, dwellings, and roadways. All parking requirements have been met. Any noise, odor, or light generated by the uses will be attenuated by distance and will not be greater than that ordinarily associated with two-family dwellings. The proposed driveways will provide adequate access with adequate sight distance. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with two-family dwellings in the R-12 zoning district, as required by Section 131.B.2.

II. Specific Criteria for Two-Family Dwellings (Section 131.N.48.a)

Section 131.N.48.a requires me to consider whether the proposed two-family dwellings are designed to be compatible in scale and character with the surrounding residential neighborhood through architectural style, materials, or details. Compatibility is to be shown

through architectural elevations or renderings submitted with the petition.³

Also of relevance to this compatibility determination is the definition of "two-family dwellings": "a building which contains two dwelling units, of which neither is an accessory apartment, and which is arranged, designed or used for occupancy by two families." The dwelling units in a two-family dwelling are not separated by an attached garage or by an open or enclosed breezeway.

Applicant's Exhibit 2, the conditional use exhibit, includes an architectural elevation. The units will each be about 25 feet wide, about 28 feet high, and are separated by a common wall. The units share common architectural features, including second-story dormer windows and similar entrances. They are not separated by an attached garage or by an open or enclosed breezeway. Additionally, the units are designed to enable viewers to read the two dwelling fronts as a single facade.

The proposed dwellings are therefore compatible with the scale and character of area residential townhouses and single-family neighborhoods, which are generally similar in height and design, in accordance with Section 131.N.48.a.

³ I note for the record a DPZ technical staff report dated March 7, 2007, which evaluates a proposed legislative amendment to eliminate the two-family dwelling conditional use from the R-12 zoning district and impose an existing lot requirement on such dwellings where permitted. Discussing the legislative history of the conditional use, the report notes that when the zoning regulations first established the use in its current form in 1993, the code did not distinguish between conversions or new construction or location on an individual site, as previous versions had.

ORDER

Based upon the foregoing, it is this **7th day of May 2007**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Elkhorn Overlook, LLC, for a conditional use for two-family dwellings in an R-12 (Residential: Single) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. Each unit shall incorporate universal design features for the aging community, including a first-floor master bathroom or a stairway capable of supporting the installation of a chair lift.
2. All entrances shall have a no-step entrance with exterior lighting.
3. All front doors shall be 36 inches wide.
4. All interior doorways shall be at least 32 inches wide.
5. All hallways shall be at least 36 inches wide.
6. All interior and exterior doors shall have lever handles.
7. Blocking for grab doors shall be provided in all bathrooms walls near toilets and sinks.
8. The minimum footprint shall be 22 feet to meet the two-car garage requirement.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.